

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**JAMES WESLEY WHITE,**

**Petitioner,**

**v.**

**CASE NO. 2:03-cv-842  
CRIM. NO. 2:00-cr-00050(3)  
JUDGE MARBLEY  
MAGISTRATE JUDGE KING**

**UNITED STATES OF AMERICA,**

**Respondent.**

**OPINION AND ORDER**

On August 29, 2006, after an evidentiary hearing on the sole remaining issue, the Magistrate Judge issued a *Report and Recommendation* recommending that the instant motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. §2255 be dismissed. Doc. No. 191. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. Doc. No. 193.

The sole issue remaining for this Court's consideration involves petitioner's allegation in claim two that his attorney prevented him from pleading guilty to the indictment without providing substantial assistance to the government. Petitioner testified at the evidentiary hearing that he was never willing to plead guilty to all of the charges against him, and that he wanted explain to the District Judge that he was not guilty of certain charges. After the evidentiary hearing, the Magistrate Judge recommended dismissal of the remaining claim on the merits.

Petitioner objects to the Magistrate Judge's recommendation, although he states that "the Magistrate Judge correctly cites testimony in the hearing." *Objections*, at 4. Petitioner argues in his objections that defense counsel operated under an actual conflict of interest and failed to properly

investigate; petitioner also contends that he was denied his right to testify at trial. *See Objections*.

Petitioner's claim that he was denied his right to testify at trial was dismissed on the merits on May 19, 2005, *see* Doc. Nos. 156, 160, and that issue is no longer properly before this Court. Further, petitioner's claim that his attorney operated under a conflict of interest and failed to investigate were not raised in petitioner's §2255 petition filed on September 17, 2003, and those issues are likewise not properly raised in these objections.

For the reasons discussed by the Magistrate Judge, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

The Clerk shall enter **FINAL JUDGMENT** in this action.

*s/Algenon L. Marbley*  
ALGENON L. MARBLEY  
United States District Judge